

# BARNES & THORNBURG LLP

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Customer No.:	23643	}	
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Group:	1618	}	
		}	
Confirmation No.:	9879	}	
		}	
Application No.:	10/765,336	}	FILED ELECTRONICALLY:
		}	June 26, 2009
Patent No.:	Unknown	}	
		}	
Invention:	VITAMIN RECEPTOR BINDING DRUG DELIVERY CONJUGATES	}	
		}	
Inventor:	Iontcho R. Vlahov	}	
		}	
Filed:	January 27, 2004	}	
		}	
Attorney Docket:	20150-74359	}	
		}	
Examiner:	Dameron Levest Jones	}	

### **REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT** **UNDER 37 C.F.R. §1.705(d)**

Mail Stop Patent Extension  
Director for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

It is respectfully requested that the Office reconsider the Patent Term Adjustment determined in the above-identified U.S. Application Serial No. 10/765,336, and revise the Patent Term Adjustment to **1055 days**, which is believed to be the correctly calculated Patent Term Adjustment.

The revised Patent Term Adjustment was determined according to the grounds for adjustment under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) and was calculated according to the periods of adjustment under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b). Furthermore, the revised Patent Term Adjustment is established according to the recent decision by the U.S. Court for the District of Columbia in *Wyeth v. Dudas*, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C. 2008). A summary of the revised Patent Term Adjustment is below.

	<b>Relevant Dates</b>	<b>Period of Adjustment</b>
Examination Delay under 37 C.F.R. § 1.702(a)	<p>37 C.F.R. § 1.703(a)(1)</p> <p>Filing date of patent application: <u>January 27, 2004</u></p> <p>Fourteen months after filing date of patent application: <u>March 27, 2005</u></p> <p>First Action mailed by USPTO: <u>January 17, 2007</u></p>	Difference for which patentee should receive credit: <u>+ 661 days</u> ,
Examination Delay under 37 C.F.R. § 1.702(b)	<p>37 C.F.R. § 1.703(b)</p> <p>Filing date of patent application: <u>January 27, 2004</u></p> <p>Three years after filing date of patent application: <u>January 27, 2007</u></p> <p>Date of filing an RCE by Applicant: <u>August 26, 2008</u></p>	Difference for which patentee should receive credit: <u>+ 577 days</u> ,
Circumstances under 37 C.F.R. § 1.704(b)	<p>37 C.F.R. § 1.704(b)</p> <p>Request for a three-month Extension of Time</p> <p>Office Action mailed by USPTO: <u>June 29, 2007</u></p> <p>Three-month due date: <u>September 29, 2007</u></p> <p>Response received by USPTO: <u>December 13, 2007</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-75 days</u>

	<b>Relevant Dates</b>	<b>Period of Adjustment</b>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Request for a two-month Extension of Time</p> <p>Office Action mailed by USPTO: <u>March 26, 2008</u></p> <p>Three-month due date: <u>June 26, 2008</u></p> <p>Response received by USPTO: <u>August 26, 2008</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-61 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Request for a two-month Extension of Time</p> <p>Office Action mailed by USPTO: <u>October 29, 2008</u></p> <p>Three-month due date: <u>January 29, 2009</u></p> <p>Response received by USPTO: <u>March 17, 2009</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-47 days</u>
<b>Total PTA as of Date of Filing an RCE by Applicant</b>		<b><u>1055 days</u></b>

Pursuant to the decision rendered in *Wyeth v. Dudas*, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 C.F.R. § 1.702(a) in addition to any examination delay under 37 C.F.R. § 1.702(b), to the extent that the two periods of delay do not “occur on the same calendar day or days.” *Wyeth*, 580 F.Supp.2d at 140, 88 U.S.P.Q.2d at 1540. A copy of *Wyeth* is attached hereto as “Attachment A” for the Office’s convenience.

Accordingly, the patentee of the above-identified patent application is entitled to a credit for the sum of 661 days under 37 C.F.R. § 1.702(a) and 577 days under 37 C.F.R. § 1.702(b), for a total of 1238 days, subject to a reduction of 183 days under 37 C.F.R. § 1.704. Thus, Applicants respectfully submit the total Patent Term Adjustment is 1055 days.

The above-identified patent is not subject to a terminal disclaimer. This Request is timely filed under 37 C.F.R. § 1.705(b) as it is being filed no later than the payment of the issue fee submitted herewith. Applicants respectfully request that, if any additional days accrue due to Patent Office delays pursuant to 37 C.F.R. § 1.702(a), the additional days be added to the total Patent Term Adjustment credit.

Applicants respectfully request revision of the Patent Term Adjustment as set forth above. The Director is hereby authorized to charge the Barnes and Thornburg LLP Deposit Account No. 10-0435 the amount of \$200.00 in payment of the reconsideration fee under 37 C.F.R. § 1.18(e), with reference to our Matter No. 20150-74359. The Director is also hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 10-0435, with reference to our Matter No. 20150-74359.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bassam S. Nader', followed by a horizontal line extending to the right.

Bassam S. Nader  
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Agent for Applicants

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